



**The Commonwealth of Massachusetts**

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**DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 06-10

June 8, 2006

Petition of NSTAR Gas Company to the Department of Telecommunications and Energy, pursuant to G.L. c. 164, § 94A, for approval of a replacement agreement for gas supply with Constellation Energy Commodities Group, Inc.

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Intervenor

## I. INTRODUCTION

On February 8, 2006, pursuant to G.L. c. 164, § 94A, NSTAR Gas Company (“NSTAR” or the “Company”) filed with the Department of Telecommunications and Energy (“Department”) a petition for approval of a gas supply replacement agreement (“Agreement”) with Constellation Energy Commodities Group, Inc. (“Constellation”). Under the Agreement, Constellation will provide NSTAR with 4,553 million British thermal units (“MMBtu”) per day of gas supply delivered to Waddington, New York, for a five-year period from November 1, 2006, through November 30, 2011. As part of the Agreement, NSTAR will provide Constellation with firm transportation capacity on Tennessee Gas Pipeline (“Tennessee”) and Iroquois Gas Transmission (“Iroquois”). The Company’s petition was docketed as D.T.E. 06-10.

Pursuant to notice duly issued, the Department held a public hearing on this matter on March 7, 2006. The Attorney General of the Commonwealth (“Attorney General”) intervened under authority of G.L. c. 12, § 11E. The Department held an evidentiary hearing on April 12, 2006. At the evidentiary hearing, the Company presented the testimony of Max A. Gowen, NSTAR’s senior energy supply analyst. Neither the Company nor the Attorney General filed briefs. The evidentiary record consists of 16 exhibits.

## II. DESCRIPTION OF NSTAR’S PROPOSAL

NSTAR states that the proposed Agreement will provide the Company with 4,533 MMBtu/day of gas supply for the five-year period from November 1, 2006, through November 30, 2011 (Exh. MAG-1, at 3). During the same time period, NSTAR will release

to Constellation 4,553 MMBtu/day of firm transportation capacity on Iroquois and 4,500 MMBtu/day of firm transportation capacity on Tennessee (id.). Constellation will deliver the full contract amount of 4,533 MMBtu/day, adjusted for Iroquois and Tennessee fuel charges, to NSTAR's Worcester, Massachusetts, Tennessee take station (id.).

### III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under G.L. c. 164, § 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a local gas distribution company ("LDC") must show that the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company at the time of the acquisition or contract renegotiation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved forecast and requirements plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price

attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29. In making these determinations, the Department considers whether the LDC used a competitive solicitation process that was fair, open and transparent. The Berkshire Gas Company, D.T.E. 02-56, at 9 (2002); Bay State Gas Company, D.T.E. 02-52, at 8 (2002); KeySpan Energy Delivery New England, D.T.E. 02-54, at 9 (2002); The Berkshire Gas Company, D.T.E. 02-19, at 11 (2002).

#### IV. ANALYSIS AND FINDINGS

In determining whether the proposed Agreement is consistent with the public interest, we first look at whether it is consistent with NSTAR's portfolio objectives. The proposed Agreement will replace the 4,553 MMBtu/day of gas supply that the Company currently receives through a contract with Alberta Northeast Utilities, Ltd. ("ANE") that expires October 31, 2006 (Exh. MAG-3, at 1). The Department found that the Company demonstrated in its most recently approved supply plan, NSTAR Gas Company, D.T.E. 05-46 (2005), a continued need for an equivalent amount of supply beyond the expiration date of the ANE contract (Exh. MAG-1, at 5-6). Absent a replacement for the expiring ANE contract supplies, there will be a gap between firm requirements approved in D.T.E. 05-46 and available portfolio resources (id. at 5, 8).

Further, the transportation contracts associated with the capacity release agreement with Constellation are currently used by NSTAR to transport the ANE gas from Waddington, New York, to the NSTAR Worcester, Massachusetts, citygate station (id. at 10). These transportation contracts continue through the termination date of the proposed Agreement (id.). Hence, the release of the capacity to Constellation will provide the required transportation for the replacement gas supplies. Based on the above factors, the Department finds the Agreement to be consistent with NSTAR's portfolio objectives as established in its approved supply plan in D.T.E. 05-46.

Next, we consider whether the acquisition of the proposed supply resource compares favorably to the range of alternative options reasonably available to the Company at the time of the acquisition. In April 2005, the Company issued a request for proposals ("RFP") for supplies to replace the ANE contract beginning November 1, 2006 (Exh. MAG-1, at 10; Exh. MAG-3).<sup>1</sup> In determining whether the RFP process was fair, open, and transparent, the Department determines whether potential bidders were notified on the specifics of how each bid would be evaluated. We note that NSTAR disclosed the evaluation process and evaluation criteria to each potential bidder, and there was an opportunity for bidders to request clarification from the Company on both the evaluation criteria and the RFP process itself

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<sup>1</sup> In the RFP, the Company expressed its interest in assigning its Iroquois and Tennessee capacity related to its Waddington, New York, purchases to the selected supplier and in receiving citygate service for the full contract quantity at NSTAR's Worcester, Massachusetts, take station (Exh. MAG-3, at 2). The Company also encouraged bidders to propose prices tied to liquid market indices and to offer both baseload and winter-only baseload supplies (Exhs. MAG-1, at 11; MAG-3, at 2).

(Exhs. MAG-3, at 1; NSTAR-AG-1-1; NSTAR-AG-1-2). The Company received 32 different proposals of varying lengths and pricing options from 14 separate bidders (Exh. MAG-4). In order to develop a fair comparison between baseload and winter-only services, the Company applied different methodologies to analyze each proposal (Exh. MAG-1, at 12).<sup>2</sup> The Company's analysis of baseload proposals was based on the delivered cost of the contract monthly volumes associated with strip prices posted on the New York Mercantile Exchange and the pricing formula proposed by each bidder (id.). The Company's analysis of winter-only supplies was based on the winter prices associated with the proposed pricing formula as well as the purchase of corresponding summer quantities based on the delivered cost of Tennessee Gulf Coast supplies through NSTAR's portfolio management contract (id.).<sup>3</sup> Furthermore, in order to provide a consistent comparison between proposals with various terms, the Company developed a proxy contract for proposals that did not cover the full five-year period (id.).<sup>4</sup>

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<sup>2</sup> Baseload proposals generally required that gas be purchased on a 365-day basis, while winter-only proposals generally required gas to be purchased for the 151-day winter season.

<sup>3</sup> While NSTAR uses the services of Merrill Lynch Commodities, Inc. to manage its gas resource portfolio, the commodity and capacity at issue in this proceeding will be exempted from the Merrill Lynch agreement, and Constellation will pay a management service fee to NSTAR and provide asset management services for the contract (Exhs. MAG-3, at 2; MAG-4; NSTAR-DTE-1-6; Tr. at 16-18).

<sup>4</sup> The proxy contract is based on an Alberta market hub monthly index price plus the full tariff pipeline rates to transport the gas from the Hub to the NSTAR citygate. The cost of the TransCanada Pipeline Limited transportation from Empress, Alberta, Canada, to Waddington, New York, for the final two years was escalated by a factor of 10 percent to account for projected toll increases (Exh. MAG-1, at 12).

The Company evaluated all proposals based primarily on the net present value of the cost of the delivered supply over the five-year period for each proposal (id. at 13). After consideration of credit risk, TransCanada Pipeline Limited rate risk, and any update of prices, the Company developed a short list consisting of four finalists (id. at 14; Exh. NSTAR-DTE-1-3).<sup>5</sup> The Company's subsequent analysis of the four finalists demonstrated that the proposed Constellation offer had the lowest net present value of five-year projected cost (Exh. MAG-5).

The Department notes that there were not any significant reliability, flexibility, or diversity differences between the four final offers (Exh. NSTAR-DTE-1-5). All four offers were from parties offering firm supplies at Waddington, New York, with the supplier assuming the upstream risk and the supplier taking an assignment of NSTAR's Iroquois and Tennessee capacity and retaining the firm obligation to deliver to the Worcester station (Exh. MAG-1, at 16).<sup>6</sup> The Company evaluated and selected the winning bid based on the criteria set forth in the RFP (Exh. NSTAR-DTE-1-5). Thus, the Department finds that the RFP process was transparent. In addition, there is no evidence that any potential bidder

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<sup>5</sup> The Company sent confirmations to those bidders selected for the short list, which included an opportunity for each bidder to refresh its bid before the Company made final recommendations to NSTAR's senior management committee. Several bidders, including Constellation, revised their bids in order to incorporate then-current market prices for gas supply (Exh. NSTAR-DTE-1-3).

<sup>6</sup> The Company indicated that the decision to replace the current Waddington, New York, supply obtained via the ANE Agreement with another Waddington, New York, supply meant that NSTAR did not: 1) increase its fixed cost of supply; 2) take on a longer term obligation than its existing underlying transportation contracts; or 3) take on any incremental upstream regulatory and rate risk (Exh. MAG-1, at 16).

objected that it was unfairly excluded from initial consideration or that a bid was unfairly evaluated. Accordingly, the Department finds that the RFP process was fair and open.

NSTAR has demonstrated that the Agreement is consistent with the Company's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company. Therefore, the Department finds the proposed acquisition to be consistent with the public interest and approves the Company's proposal.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby

ORDERED: That the gas supply replacement agreement between NSTAR Gas Company and Constellation Energy Commodities Group, Inc., is hereby APPROVED; and it is

FURTHER ORDERED: That NSTAR Gas Company comply with any and all other directives contained in this Order.

By Order of the Department,

/s/  
Judith F. Judson, Chairman

/s/  
James Connelly, Commissioner

/s/  
W. Robert Keating, Commissioner

/s/  
Paul G. Afonso, Commissioner

/s/  
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.